

SANDRA LEE DIGLIO,	:	BEFORE THE SCHOOL
	:	ETHICS COMMISSION
V.	:	
	:	Docket No.: C14-01
HARRY DUNLEAVY, SUSSEX COUNTY TECHNICAL SCHOOL BOARD OF EDUCATION, SUSSEX COUNTY	:	DECISION
	:	
	:	

PROCEDURAL HISTORY

This matter arises from a complaint filed by Sandra Diglio alleging that respondent Harry Dunleavy violated the School Ethics Act, N.J.S.A. 18A:12-21 et seq. Specifically, Ms. Diglio alleges that Mr. Dunleavy: 1) expressed concern over high insurance costs and then expressed his desire that Health Choice, Inc., an insurance administrator in which he holds an interest, be given the opportunity to submit a quote; and 2) called for a vote on hiring a new board attorney without an agenda or discussion when the law firm has as a partner a member of the Board of Directors for the health insurance administrator in which he is alleged to have an interest.

Respondent filed his answer to the complaint stating that Health Choice, Inc. was not prohibited from doing business with the board because he owned shares of stock in the company, and the company never submitted a proposal to provide insurance coverage for the Board. Regarding the law firm, he admits that he recommended the firm that the Board ultimately chose and denied that he violated any provision of the School Ethics Act in doing so. He denies knowing that one of the members of the law firm was a member of the Board of Directors of Health Choice, Inc.

The Commission advised the parties that it would discuss this Complaint at its meeting on June 26, 2001. They were advised of their right to attend and present witnesses and testimony to aid in the Commission's investigation. Both parties appeared at the meeting, Ms. Diglio with witnesses Joan Hitpas, Sussex County Technical School Board member and Bruce Cerra, former School Business Administrator. Mr. Dunleavy appeared with Superintendent Joseph Cammarata. The Commission tabled its decision at that time. Although both parties raised other issues during the course of testimony before the Commission and followed up their testimony with additional submissions and arguments, the only issues before the Commission were those that were raised in the complaint regarding the health insurer and the law firm. Any additional allegations will have to be addressed in a separate complaint.

At its public meeting of September 25, 2001, the Commission found no probable cause to credit the allegations in the complaint against Mr. Dunleavy and dismissed the complaint against him. The Commission adopted this decision at its meeting of October 23, 2001.

FACTS

The Commission was able to discern the following facts on the basis of the pleadings, documents submitted, testimony and its investigation.

Harry Dunleavy was appointed to the Sussex County Technical School Board of Education on June 28, 2000. On November 1, 2000, he was elected President of the Board, taking over for Sandra Lee Diglio, who had previously served in that capacity. In several Board discussions, Mr. Dunleavy expressed the desire to have the school advertise for new insurance quotes citing the high cost of the Board's insurance coverage. He further expressed his desire for Health Choice, Inc., a company in which he owns shares of stock, to be given the opportunity to submit a quote. Bruce Cerra, former School Business Administrator for Sussex County Technical School, testified that Mr. Dunleavy contacted him on a regular basis regarding the Health Choice quote. He further testified that Health Choice submitted a proposal that was higher than that of the Board's provider at that time. Mr. Cerra testified that he left before bringing the quotes received to the Board. Mr. Dunleavy testified that he never saw a proposal from Health Choice and when he requested a copy from Health Choice was told that none existed. These positions are not irreconcilable as someone from Health Choice could have submitted a proposal that the person to whom Mr. Dunleavy spoke was unaware. Ultimately, however, the Board never considered a proposal from Health Choice and never contracted with Health Choice.

Although Mr. Dunleavy filed a School Ethics Commission disclosure form on July 25, 2000 stating that he held an interest in Health Choice, Inc. and "interest" is defined in the form instructions and N.J.S.A. 18A:12-23 as over 10% of the ownership or stock of a corporation, Mr. Dunleavy was determined to have a minority interest in the company of much less than the 10% required to constitute an "interest."

When Mr. Dunleavy became President of the Board, he informed the Board that proposals would be sought from various attorneys because the Board's attorneys' fees were too high. At the December 27, 2000 meeting, the Board members were given three proposals. Two of the firms were already consultants to the district and the third, Weiner Lesniak, also applied for the position. After interviewing all three firms, Mr. Dunleavy recommended that the Board appoint Weiner Lesniak. When a Board member provided articles about the recommended firm's high attorney fees, the Board directed the Superintendent to request recommendations and references from each firm. The Board held a special meeting on January 4, 2001, ostensibly for the purpose of a student discipline issue. Mr. Dunleavy made a motion to appoint Weiner Lesniak as the Board Solicitor. When questioned as to the status of references from other firms, the Superintendent stated that the references from Weiner Lesniak were excellent. Mr. Dunleavy called for a vote. Weiner Lesniak was chosen as Board Solicitor at the January 27, 2001 meeting. George Hanley is a partner in the law firm of Weiner Lesniak and a member of the Board of Directors of Health Choice, Inc.

ANALYSIS

The issue before the Commission is whether the above facts establish that Mr. Dunleavy violated N.J.S.A. 18A:12-24(b), (c) or (e) of the School Ethics Act.

N.J.S.A. 18A:12-24(b) prohibits a school official from using or attempting to use his official position to secure unwarranted privileges, advantages or employment for himself, members of his immediate family, or others. Complainant contends that Mr. Dunleavy's manner of going about creating an opportunity to have Health Choice bid on providing the insurance coverage to the district was a clear attempt to use his position to secure unwarranted privileges or advantages for himself and/or for Health Choice. The Commission, having established through its investigation that Mr. Dunleavy is a minority shareholder in Health Choice, finds that there was no unwarranted privilege or advantage for Mr. Dunleavy in suggesting that Health Choice be allowed to submit a quote. Further, since any company seeking to be the provider of health insurance for the district would have to submit a proposal, the Commission does not find it to be an unwarranted privilege or advantage to be allowed to submit a proposal. Health Choice was given no greater privilege than the other companies that were permitted to submit a proposal. Ultimately, according to Mr. Cerra, the company's proposal was higher than that of some of the other companies. This is how the process is supposed to work. Therefore, the Commission finds no probable cause to credit the allegation that Mr. Dunleavy used his position to secure unwarranted privileges or advantages for himself or Health Choice, Inc. in violation of N.J.S.A. 18A:12-24(b).

Similarly, Mr. Dunleavy has not been shown to have any interest in Weiner Lesniak. Complainant urges the Commission to find that Mr. Dunleavy's manner of speeding items through without thorough discussion and full review of references of a law firm was an attempt to secure unwarranted privileges or advantages for the firm. While the Commission agrees that such decisions should be well reasoned, ultimately such an interpretation of N.J.S.A. 18A:12-24(b) would hamper board members in seeking changes that they ultimately believe would be in the best interest of the board. The only connection that Complainant has established between Mr. Dunleavy and the law firm is that a partner in the firm serves on the Board of Directors of Health Choice, Inc. This is a loose connection that would result in no privilege or advantage to Mr. Dunleavy. Further, Ms. Diglio and Mr. Cerra testified that Superintendent Cammarata took on the responsibility for checking the references of the law firms and he chose to only check the references of Weiner Lesniak because the other firms were already providing services to the Board. It has not been established that he did so because of Mr. Dunleavy's loose connection to a partner in the firm. Ms. Diglio also raised an issue regarding the political contributions of the firm to a party in which Mr. Dunleavy serves as Treasurer. The Commission does not find such contributions to be determinative since other firms gave political contributions as well. Therefore, the Commission finds no probable cause to credit the allegation that Mr. Dunleavy

used or attempted to use his position to secure unwarranted privileges for the Weiner Lesniak law firm in violation of N.J.S.A. 18A:12-24(b).

N.J.S.A. 18A:12-24(c) provides:

No school official shall act in his official capacity in any matter in which he, a member of his immediate family, or a business organization in which he holds an interest, has a direct or indirect financial involvement that might reasonably be expected to impair his objectivity or independence of judgment. No school official shall act in his official capacity in any matter where he or a member of his immediate family has a personal involvement that is or creates some benefit to the school official or member of his immediate family.

As set forth above, Mr. Dunleavy did not have an “interest” in Health Choice, Inc. as that term is defined in N.J.S.A. 18A:12-23 when the discussion took place over whether Health Choice could submit a proposal to provide the district’s insurance coverage. Therefore, the question is whether, because he owns some stock in the company, he has an indirect financial involvement with the company that might reasonably be expected to impair his objectivity. The Commission finds that the Legislature set the 10% ownership requirement so that board members who have investments would not be forbidden from participating in matters in which they really could not profit. For example, an owner of a small amount of AT&T stock would not profit in any measurable way from the use of AT&T as the district’s long distance carrier. Further, Mr. Dunleavy’s remarks were that the company should be allowed to submit a proposal. There was no motion pending to appoint an insurance provider at that time, only a discussion of the need to investigate lowering insurance costs. While one could argue that he should not discuss or vote on a motion to appoint Health Choice as the insurance provider, his suggestion that Health Choice be allowed to submit a proposal is not a matter in which he had a financial involvement that might reasonably be expected to impair his objectivity. Therefore, the Commission finds no probable cause to credit the allegation that Mr. Dunleavy violated N.J.S.A. 18A:12-24(c) in connection with Health Choice.

Regarding the law firm, the Commission has not found sufficient evidence of a financial or personal involvement that might reasonably be expected to impair Mr. Dunleavy’s objectivity or independence of judgment. Like many law firms, the firm of Weiner Lesniak has contributed to a political party in Sussex County, for which Mr. Dunleavy serves as treasurer. Also, the partner of a law firm is a member of the Board of Directors of Health Choice. Neither of these facts establishes a financial or personal involvement that would prohibit Mr. Dunleavy from recommending or voting upon the firm to be appointed as Board Solicitor. Therefore, the Commission finds no probable cause to credit the allegation that Mr. Dunleavy violated N.J.S.A. 18A:12-24(c) in connection with the appointment of the law firm.

Complainant last alleges that Mr. Dunleavy’s conduct in the above matters constitutes a violation of N.J.S.A. 18A:12-24(e), which provides, in pertinent part:

No school official, or member of his immediate family, ..., shall solicit or accept any gift, favor, loan, political contribution, service, promise of future employment, or other thing of value based upon an understanding that the gift, favor, loan, contribution, service, promise, or other thing of value was given or offered for the purpose of influencing him, directly or indirectly, in the discharge of his official duties.

The Commission has uncovered no information that demonstrates that Mr. Dunleavy solicited or accepted any thing of value in exchange for his suggestion that Health Choice be allowed to submit a proposal or his recommendation that Weiner Lesniak be appointed as the Board Solicitor. Therefore, the Commission finds no probable cause to credit the allegation that Mr. Dunleavy violated N.J.S.A. 18A:12-24(e).

DECISION

For the foregoing reasons, the Commission finds no probable cause to credit the allegations that Respondent Harry Dunleavy violated N.J.S.A. 18A:12-24(b), (c) or (e) of the School Ethics Act and dismisses the complaint against him.

The Commission does not find the complaint to be frivolous. In order to find that a complaint was frivolous, the Commission must find on the basis of the pleadings, its investigation or the evidence presented that either:

- 1) The complaint...was commenced, used or continued in bad faith, solely for the purpose of harassment, delay or malicious injury; or
- 2) The nonprevailing party knew, or should have known, that the complaint...was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification or reversal of existing law. [N.J.S.A. 18A:12-29(e); N.J.S.A. 2A:15-59.1]

The Commission does not find that the complaint was filed in bad faith, but based on a concern for the expeditious manner in which Mr. Dunleavy was making major changes to Board vendors although some Board members expressed reservations over the recommended vendors. Further, the Commission does not find that the complaint was without any reasonable basis in law. Mr. Dunleavy provided in his disclosure form that he had an interest in Health Choice, Inc. It was reasonable for complainant to base her complaint on his disclosure.

This decision is a final decision of an administrative agency. Therefore, it is appealable only to the Superior Court--Appellate Division.

Paul C. Garbarini, Chairperson

Resolution Adopting Decision – C14-01

Whereas, the School Ethics Commission has considered the pleadings, documents and its investigation; and

Whereas, the Commission has found no probable cause to credit the allegation that Harry Dunleavy violated N.J.S.A. 18A:12-24(b), (c) or (e); and

Whereas the Commission has reviewed a draft decision; and

Whereas, the Commission agrees with the draft decision;

Now Therefore Be It Resolved that the Commission hereby adopts the decision and directs its staff to notify all parties to this action of the Commission's decision herein.

Paul C. Garbarini, Chairperson

I hereby certify that the School
Ethics Commission adopted
this decision at its public meeting
on October 23, 2001.

Lisa James-Beavers
Executive Director